

Supreme Court, U.S.
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No. 05 - 835 DEC 27 2005

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In The
Supreme Court of the United States

LAUREN POPOVICH,

Petitioner,

v.

CUYAHOGA COUNTY COURT OF COMMON
PLEAS, DOMESTIC RELATIONS DIVISION,

Respondent.

**On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Sixth Circuit**

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Does Title II of the Americans with Disabilities Act prohibiting discrimination against the disabled in the provision of public services, extend standing to "aggrieved" individuals without a disability who have suffered damage by virtue of their association with a disabled individual who has been the victim of discrimination by a public entity.

LIST OF PARTIES BELOW

The parties herein are those parties listed in the case caption, Lauren Popovich and the Cuyahoga County Court of Common Pleas, Domestic Relations Division.

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PETITION FOR WRIT OF CERTIORARI

Petitioner, Lauren Popovich, respectfully prays that a writ of certiorari issue to review the September 27, 2005 Opinion and Judgment of the United States Court of Appeals for the Sixth Circuit.

OPINIONS BELOW

The opinion and judgment of the U.S. Court of Appeals for the Sixth Circuit, *Popovich v. Cuyahoga County Court of Common Pleas, Domestic Relations Division*, Nos. 00-03136 is unreported and is reprinted at App. 1. The decision of the District Court is reprinted at App. 9.

STATEMENT OF JURISDICTION

Petitioner seeks review from the opinions and judgments of the U.S. Court of Appeals for the Sixth Circuit of September 27, 2005. The Supreme Court has jurisdiction to review cases from the Court of Appeals under 28 U.S.C. §1254(1).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

1. The pertinent provisions of Article III of the United States Constitution is as follows:

Section 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under

their Authority; – to all Cases affecting Ambassadors, other public Ministers and Consuls; – to all Cases of admiralty and maritime Jurisdiction; – to Controversies to which the United States shall be a Party; – to Controversies between two or more States; – between a State and Citizens of another State; – between Citizens of different States; – between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

2. Title II of the Americans with Disabilities Act, 42 U.S.C. §12132 provides:

Subject to the provisions of this subchapter, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.

3. The enforcement provision of Title II of the Americans with Disabilities Act, 42 U.S.C. §12133 provides:

The remedies, procedures, and rights set forth in section 794a of Title 29 shall be the remedies, procedures, and rights this subchapter provides to any person alleging discrimination on the basis of disability in violation of section 12132 of this title.

4. The Federal Rehabilitation Act's enforcement provision, 29 U.S.C. §794a provides in pertinent part:

* * *

(2) The remedies, procedures, and rights set forth in Title VI of the Civil Rights Act of 1964 [42 U.S.C. §2000d et seq.] shall be available to

any person aggrieved by any act or failure to act by any recipient of Federal assistance or Federal provider of such assistance under section 794 of this title.

* * *

STATEMENT OF CASE

1. Petitioner, Lauren Popovich, is a citizen of the County of Cuyahoga, State of Ohio. Ms. Popovich was the minor daughter of a Defendant in two domestic relations proceedings in the Cuyahoga County Court of Common Pleas, Domestic Relations Division. Ms. Popovich herself was made a party to the Domestic Relations Proceedings.

2. Aggrieved by the conduct of the Court in failing to provide a reasonable accommodation to his hearing disability, Mr. Popovich filed a charge of discrimination with the Department of Justice. Thereafter, upon insistence by Mr. Popovich that an accommodation be provided, and upon learning that a charge of discrimination had been filed with the Department of Justice, the Court stayed his case, pending the Department of Justice investigation. The Stay was not the result of a Court order but rather a refusal to rule on pending motions, schedule hearings or move the case forward. As a result of the *de facto* stay of proceedings, Mr. Popovich was denied his Constitutional right to Due Process and was prohibited by Court Order to see his daughter for a period of three years under the terms of a Temporary Protective Order. See generally, *Popovich v. Cuyahoga County Court of Common Pleas*, 276 F. 3d 808 (6th Cir. 2002), cert. denied, 537 U.S. 812, 123 S. Ct. 72, 154 L.Ed.2d 15 (2002).

3. Likewise, Petitioner, Lauren Popovich, only the age of 11 was denied the right to see her father without due process of law and on the basis of her father's disability and protected activity.

4. Petitioner Lauren Popovich filed suit on December 19, 2002 alleging violation of Title II of the Americans with Disabilities Act asserting that she had been aggrieved by virtue of the discriminatory conduct of the defendant, and specifically by the Court's conduct in staying proceedings by virtue of her father's request for a hearing accommodation and charge of discrimination filed against the respondent with the Department of Justice. She asserts that she was denied the benefit of her relationship with her father for a period of at least three years by virtue of the discriminatory and retaliatory conduct of the respondent.

5. On May 3, 2004, the United States District Court for the Northern District of Ohio granted a motion to dismiss on the basis that the Plaintiff, though meeting the minimum threshold for standing under Article III of the Constitution, failed to satisfy elements of prudential standing.

6. On September 27, 2005 the United States Court of Appeals for the Sixth Circuit affirmed the decision in a *per curiam* decision concluding that Plaintiff lacked associational standing under Title II of the ADA because she herself was never denied access to any Court Proceedings. Proceedings which the Court refused to schedule on the basis of her father's disability and in retaliation for his protected activity.

REASONS FOR GRANTING THE PETITION FOR WRIT OF CERTIORARI

This petition invites the Court to settle an issue of the scope of associational protection provided by Title II of the ADA and the Rehabilitation Act. At issue is whether congress incorporated enforcement language in Title II of the Americans with Disabilities Act, which extends standing to all individuals who are "aggrieved" by the discriminatory conduct of a public entity. The limitation on associational standing espoused by the Appellate Court below arbitrarily restricts claims under Title II in a manner not intended by Congress, and in conflict with the Second Circuit Court of Appeals, prior Sixth Circuit precedent, and this Court's interpretation of identical enforcement language in other civil rights statutes.

In the present case, Plaintiff brought claims for associational discrimination in the provision of public services pursuant to Title II of the Americans with Disabilities Act (ADA) (42 U.S. §§12132 and 12133) and the Federal Rehabilitation Act, 29 U.S.C. §794 as well as claims for retaliation in violation of Title IV of the ADA, 42 U.S.C. §12203. The District Court conducted an analysis of whether petitioner had standing to assert a claim under Title II and Title IV of the ADA based upon her association with her father, himself an alleged victim of disability discrimination and retaliation by the defendant, Court of Common Pleas Domestic Relations Division. The District Court, concluded that Petitioner met the Constitutional standing requirements of Article III, but held that Petitioner failed to alleged facts sufficient to satisfy prudential standing requirements.

Though not using the term "prudential standing", the Sixth Circuit affirmed the decision of the District Court by

essentially concluding that the Plaintiff is not in the zone of protection provided for by the ADA and Rehabilitation Acts prohibition against associational discrimination. In doing so, the Sixth Circuit abrogated over twenty-five (25) years of precedent from this Court as well as the Sixth Circuit itself.

It is clear from the language of the ADA enforcement provisions and federal case law interpreting this language that prudential standing considerations were not applicable herein.

Title II of the ADA states in pertinent part:

... no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.

42 U.S.C. §12132.¹ The applicable enforcement provision of Title II provides that the "remedies, procedures, and rights set forth in section 794a of Title 29 shall be the remedies,

¹ Though Title II does not expressly provide for prohibitions against associational discrimination, Title I (42 U.S.C. §12112(b)(4)) and Title III (42 U.S.C. §12182(b)(1)(E)) do prohibit such discrimination. The legislative history of the ADA emphasized the intent of Congress that Title II prohibition against discrimination "be identical to those set out on the applicable provisions of Title I and III of this legislation . . ." See *Innovative Health Systems, Inc. v. City of White Plains*, 117 F.3d 37, 47 (2nd Cir. 1997) citing H.R. Rep. No. 485 (II), 101st Congress, Second Session, 84 (1990), reprinted in 1990 U.S.C.C.A.N. 303, 367. Further, as noted by the court in *Innovative Health Systems*, the implementing regulations of Title II contain prohibition against discrimination against individuals or entities because of their association with individuals with disabilities. *Id.*, citing 28 C.F.R. §35.130(g)